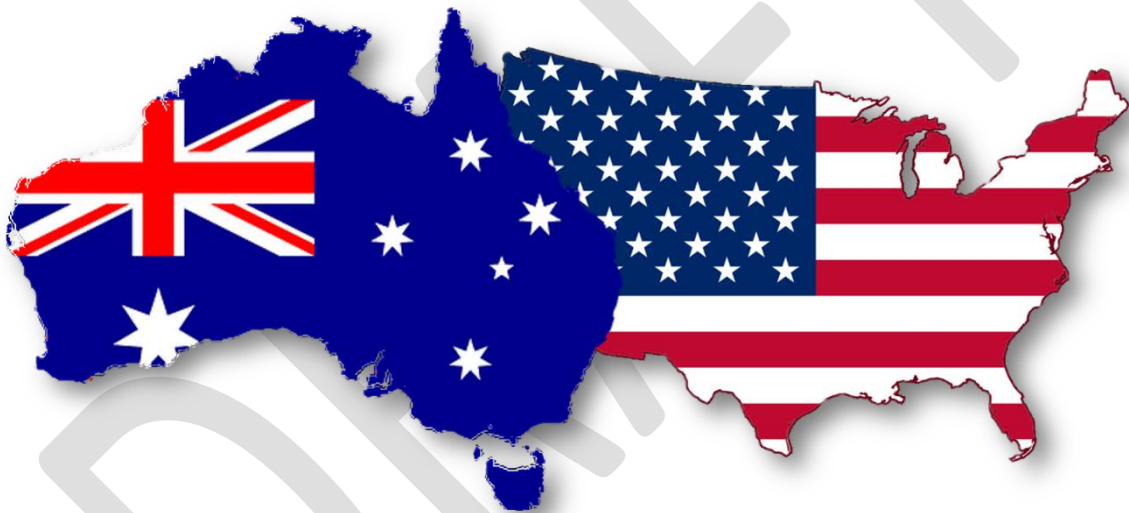


Strategy Roadmap

Let's Fix the Tax Treaty!



Version 1c
December 2016

Executive Summary

To be written after main document is finished

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1 Introduction

1.1 Let's Fix The Tax Treaty!

Let's Fix the Tax Treaty! (FTT) is an Australian focused advocacy group seeking to press the Australian Government for amendments to the Australia / US Tax Treaty and the FATCA IGA to eliminate penalties and discrimination against a subclass of Australian citizens that is also disadvantageous to all Australians.

There are many groups within the United States as well as around the world working to influence the US to move away from their unique and often unjust practice of citizenship-based taxation (CBT). However, effective international taxation requires cooperation from both countries. Alternatively, FTT seeks to affect change **within Australia** to address the many unfair and adverse impacts on impacted Australian persons.

As a grass-roots volunteer organisation, FTT seeks to

- 1) find solutions to the many adverse impacts resulting from the US practices of citizenship-based taxation,
- 2) target its efforts in our home country of Australia; and
- 3) provide a vehicle for organised collective action.

These efforts are being undertaken on the behalf of a diverse stakeholder group of impacted persons, estimated to be potentially in excess of 200,000 persons¹ that includes:

- US citizens living in Australia, many of whom are dual citizens who have permanently immigrated
- Children born while their Australian parents were living in the US
- Australians who have acquired US Citizenship and have returned home
- Children to the above who may also be considered US Persons as a result of their parentage
- Australians currently living within the US
- Australian citizen spouses of any of the above

A good advocacy plan will help our group decide where to spend time and effort to achieve our goals and assist us to be as effective as possible with our limited resources. The plan will serve as a key reference document that is updated as we progress towards achieving our goals.

Developing an Advocacy Strategy and Action Plan is a fairly straight-forward process (see Figure 1) that requires the group to consider a number of key questions:

- What is our goal?

¹ Latest ABS data at http://stat.abs.gov.au/Index.aspx?DataSetCode=ERP_COB shows 102,730 Australian residents born in the US as of 2015. Using the methodology in <http://tinyurl.com/zybtg5n> provides an estimated 79,412 Australian born children of US citizens. It is not possible to estimate the number of Australian-born naturalised US citizens residing in Australia. Additionally, the Australian embassy in New York estimates there are 200,000 Australians living in the US (<http://newyork.usa.embassy.gov.au/nycg/ANY1Wi09.html>).

- What are the specific objectives that will lead us to achieving our goal?
- What are our arguments and evidence?
- Who can we collaborate or partner with?
- Who do we need to influence?
- What are our messages? How will we deliver these messages?
- How will we approach this? Public / Private / Direct / Indirect?
- What key activities should be undertaken?
- What are our priorities and timings?
- How will we organise and manage our group?

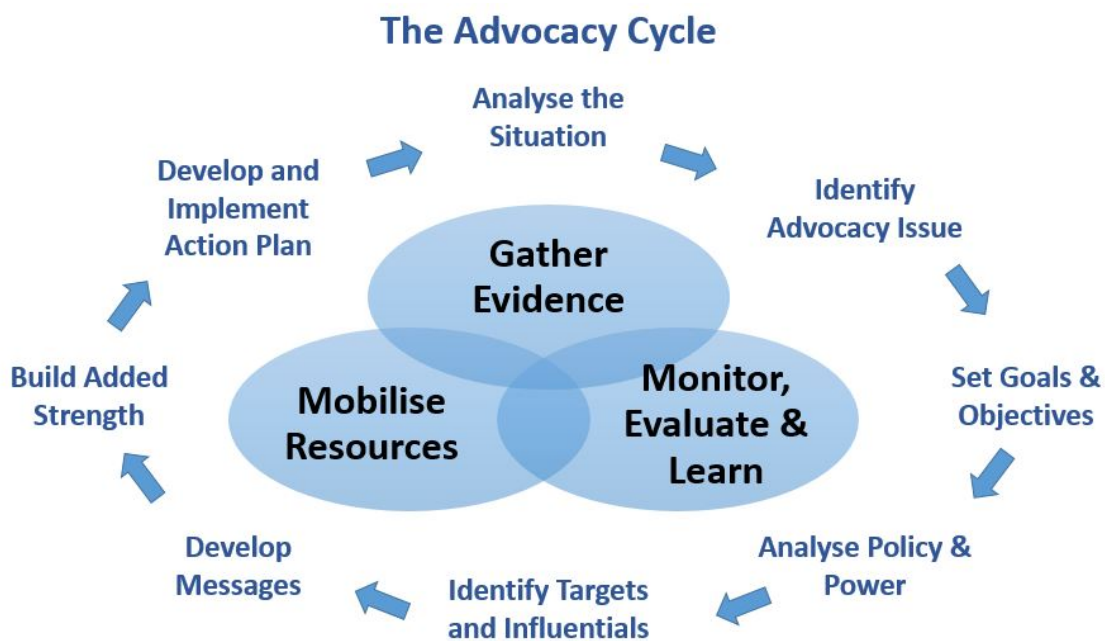


Figure 1 - The Advocacy Cycle

1.2 Document Purpose

The purpose of this paper is to map out the advocacy strategy for the FTT advocacy group and serve as a basis to agree and communicate:

- 1) Objectives, goals and priorities
- 2) Methods and initiatives
- 3) Targets
- 4) Messages
- 5) Action Plans

The document has been initially developed by the Steering Committee but will be published for review and feedback from the wider stakeholder community.

It is envisioned that this document will be “evergreen” with amendments / extension made as required. Ideally, the document will be formally reviewed and refreshed on an annual basis by the Steering Committee and yearly objectives and action plans created.

1.3 Document Structure

This document is divided into three main sections:

- 1) Group Structure & Governance – overview of how the FTT group is organised and run
- 2) Framing – this section seeks to analyse and frame the issue
- 3) Action Plan – activity focused plan, both long and shorter (annual) term

2 FTT Group Structure & Governance

The overarching purpose of the *Let’s Fix the Tax Treaty!* group is to educate and encourage our Australian elected representatives to take action to mitigate the problems that US extraterritorial taxation imposes on all of Australia through amendment of the tax treaty and/or FATCA IGA. This group aims to implement an organised campaign to achieve this objective using volunteer resources drawn from the community of impacted stakeholders.

While an active webpage and Facebook group will be instrumental in achieving our objective, not all of the strategising and governance can occur in an open forum. Equally, these tasks are too much for a single person. The solution is to form a steering committee, supported by standing roles / subcommittees and further supported by the overall membership in undertaking identified Key Activities (reference Figure 2 below).

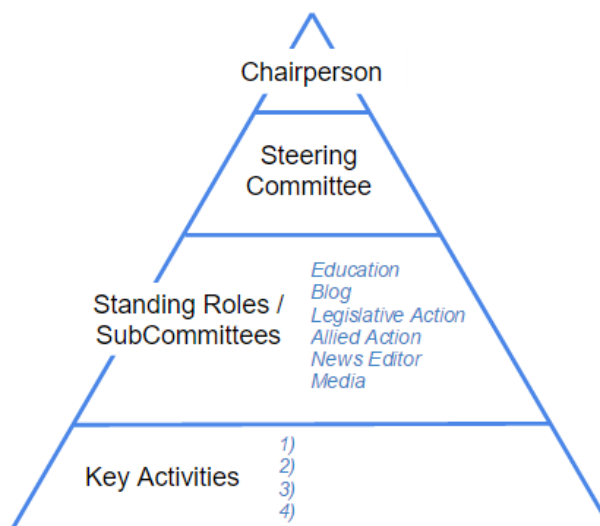


Figure 2 – FTT Group Organisation *{finish graphic later}*

2.1 Steering Committee

The Steering Committee purpose is to provide organisation leadership for the FTT activities. Ideally, the committee will consist of 5-8 individuals; ie “*Many hands make light work*”. Most of us will have full time jobs or other obligations that will limit the amount of time that can reasonably be expected. Karen Alpert, founder of this initiative, will serve as the Chairperson of the Steering Committee. Note that all Steering Committee members must be Australian residents or Australian citizens. While we would prefer that Committee members use their real names, we understand that those who are avoiding notice of the IRS may wish to participate anonymously. See below for conditions of anonymous participation in the Steering Committee. This committee should be as diverse as possible covering a variety of skills and strengths.

2.1.1 Ongoing Responsibilities of all Steering Committee members:

- Assist in moderation of the Facebook Group and/or the website (at least one, both if desired)
- Comment on posts on both FB group and blog
- Skype committee meetings as needed - target monthly once strategy has been developed.

2.1.2 Anonymous Participation in the Steering Committee

Those who prefer to participate without exposing their real identity to public scrutiny should be willing to:

- Correspond with their Australian MP under their real name.
- Identify themselves to the rest of the Steering Committee (who agree to maintain the anonymity of these members).
- Participate as moderators and/or authors on the website (using a pseudonym) and identify themselves there as a member of the Steering Committee under their pseudonym.
- Meet with the Steering Committee via Skype or other internet chat/voice service.

2.2 Standing roles / Sub-Committees

In addition, each steering committee member will hold one of the following roles:

- 1) **Education Coordinator:** write or source one blog post per week that addresses issues in the Problem section of the website. Maintain Problem section of website. (Karen Alpert)
- 2) **Blog Coordinator:** write or source one blog post per week. Maintain Discuss section of website. (Vacant)
- 3) **Legislative Action Coordinator:** develop strategic list of targets (in conjunction with steering committee); maintain Act section of the website; maintain list of legislators contacted. (Vacant)
- 4) **Allied Action Coordinator:** A list of potential allies (i.e. superannuation industry) and key players will come out of the strategy document. Coordinate contact with these people (either write letters or arrange to have letters written by appropriate group members) (Carl Greenstreet)
- 5) **News Editor:** post links to relevant news articles on both the blog and FB group as they appear (as we gain momentum, other group members will post more). Manage Resource section of the website. (Vacant)

- 6) **Media Coordinator:** serve as contact point for media enquiries, forwarding them to the appropriate person(s); proactively write to media (possibly letters to editor); manage twitter account. (Vacant)

Each coordinator can recruit members from the greater group to form subcommittees as needed. This list will be reviewed for gaps once the strategy document is complete and the group's targets, activities and key actions are defined.

2.3 Dispute Resolution

If any member of the Steering Committee feels that someone is not meeting the responsibilities laid out in this document, they should discuss this in private with the Chair of the Steering Committee. At the sole discretion of the Chair, a Committee member who is not meeting the responsibilities laid out in this document can be removed from the Steering Committee.

3 Framing

The purpose of this section is to analyse and document our: 1) key goals, objectives and priorities; 2) primary targets and 3) key messaging to achieve FTT objectives.

3.1 Issue

Australia permits the United States to tax Australian-resident US citizens on all income earned while living within Australia. This unique US practice of taxing on the basis of citizenship, not country of residence, leads to double taxation, considerable complexity and financial risks impacting up to 200,000 stakeholders within Australia.

In its entirety, this unique practice drains significant capital from the Australian economy in the form of punitive taxes that would otherwise be spent or invested here, undermines both Australian sovereignty and domestic policy and clearly discriminates against a subset of Australians.

Let's Fix the Tax Treaty! advocates for the Australian Government to renegotiate the underpinning legacy tax treaties and intergovernmental agreements to provide a fair go for all Australians.

3.2 Key Goals & Objectives

Let's Fix the Tax Treaty! group aims to achieve the following overall key goals and objectives within the next two to five years:

1. Australian government to engage with the USA to remedy the deficiencies in the Australia / US tax treaty to mitigate the negative consequences of US CBT on Australians and the Australian economy. This can be done through both mutual agreement and renegotiation of new treaty terms.
2. Australian Government to amend the FATCA IGA to require reporting on only non-resident account holders so that Australian residents are not denied financial services due to their country of origin, and that adequate privacy protections are in place.

Failing an amendment to the IGA, the Australian government should use lack of reciprocity by the US to pressure the US to come to the table to negotiate the tax treaty.

3. Disclosure: Banks should provide statements for awareness and verification when data is sent to ATO, and the ATO should verify transmission of data to the IRS at an aggregate level; ATO should fix website to inform US Persons that they will be double taxed. **(also ATO use of the data??)**

3.3 Analysis

This section aims to explore the following key issues:

1. What needs to specifically be changed to achieve our three key objectives? What is the priority for these changes?
2. What specific groups and organisations are directly accountable for the required changes? What are their current policies in relation to our issues?
3. Who (by name / role / organisation) do we specifically want to target to affect change? What do they know about our issues? What is their position on these issues? Who might be able to influence them?
4. Who might effectively influence these targets?
5. Who are our potential partners & alliances?
6. What is our messaging?

(insert FTT SWOT diagram & discussion)

3.3.1 What Needs to Change?

3.3.1.1 Tax Treaty

Problem	Detailed Description	Priority (H/M/L)
Superannuation	There are a variety of ways that superannuation can be reported on a US tax return. These range from completely tax free (as the equivalent of social security) to fully taxable including appreciation inside the fund (as a foreign grantor trust). Indications are that the IRS is currently pushing the grantor trust interpretation, at least in some circumstances.	High
Saving Clause	The saving clause allows the US government to impose direct taxation on some Australian citizens and residents. It denies those who are US citizens the use of treaty provisions except for a limited set of specified provisions. Due to the action of the saving clause, an individual can be taxed under resident tax rules by both the US and Australia.	High

Problem	Detailed Description	Priority (H/M/L)
PFICs	<p>Australian managed funds, listed investment companies (LICs), real estate investment companies (A-REITs), and exchange traded funds (ETFs) are all treated as PFICs for US taxpayers. PFIC treatment results in punitive taxation of these investment vehicles. Part of the rationale behind this punitive treatment is to prevent US taxpayers from using “foreign” investments to defer taxable income. But, any of these investments that is registered for sale to retail investors will be required by Australian law to distribute all income and realised gains currently, just like the American equivalent. The treaty should include a clause that states that Australian investment structures that are sold to retail investors are not to be considered “foreign corporations” under the PFIC rules.</p>	High
NIIT (Net Investment Income Tax)	<p>Enacted as part of Obamacare, NIIT is a flat 3.8% tax on investment income for US taxpayers whose income exceeds a threshold determined by filing status. NIIT applies to all investment income, regardless of source, and cannot be offset by foreign tax credits. For those affected, this is a clear case of double taxation.</p>	Medium
Unemployment benefits	<p>The US taxes Australian unemployment benefits and other Centrelink benefits (except the Age Pension and Disability Pension).</p>	Low
Sale of principal residence	<p>Capital gain on the sale of a personal residence is taxable in the US (with a US\$250,000 exemption per person). This gain is computed as if the purchase and sale were in US dollars. In addition, the US will tax any USD gain on the discharge of a mortgage on the property. Note that, since the residence is a personal use asset, losses are not allowed.</p>	Medium

Problem	Detailed Description	Priority (H/M/L)
Effective nationality / Accidental Americans	There is a principle under international law that dual citizens have an “effective nationality.” Where a dual citizen has closer ties to Australia than the US, this principle should limit the extraterritorial reach of US tax law. The case of Accidental Americans illustrates this principle in the extreme. Accidental Americans were born in the US to Australian parents and returned to Australia as young children. They have no ties to the US, they may not even have a US passport or social security number. Yet, due to their place of birth, the US insists on the right to tax them for the rest of their life or until they pay USD2,350 to renounce their US citizenship.	Medium
Impediments to using Australian legal structures (trusts and companies)	SMSFs, Family trusts, Australian Corporations and other legitimate Australian legal structures require extensive disclosure under US tax law, with punitive penalties (generally starting at USD10,000) for failure to file information forms. Furthermore, structures that are effective for Australian tax planning may be disregarded for US tax.	Medium
Gift and Inheritance Tax	While Australia has no inheritance or gift taxes, the US does. For US citizens, worldwide wealth is taxed on death (with an exclusion of about USD5.5million). For estate tax purposes, it does not matter where in the world the asset is located, or whether it was owned prior to becoming a US taxpayer. Tax is based on the value of all assets at death.	Low

3.3.1.2 FATCA IGA

Problem	Detailed Description	Priority (H/M/L)
Denial of certain types of accounts	Some financial institutions have denied Australian citizens/residents the ability to open certain types of investment and/or superannuation accounts. This seems to be limited to Australian subsidiaries of international banks.	Low

Problem	Detailed Description	Priority (H/M/L)
Reporting on Australian residents	Under the FATCA IGA, Australian residents with US indicia are identified by their financial institution to be reported to the IRS. Prior to FATCA, the US practice of citizenship based taxation was unenforceable, especially with regard to those with few or no US ties. Reporting on Australian residents has forced Australian financial institutions to identify US taxpayers for the IRS, even when the affected individuals have no ties to the US other than place of birth or parentage.	High
Lack of reciprocity	One of the inducements for Australia to sign on to the FATCA IGA was reciprocal information reporting on US accounts of Australian residents. The US Congress has yet to pass legislation to enable the IRS to collect this information from US banks. Furthermore, the detail of information to be provided by US banks is much less than that provided by Australian banks. The IGA allows for a re-visiting of the agreement should the promised reciprocation fail to eventuate.	Medium
Reporting of accounts below the USD50,000 threshold	While the IGA only requires reporting of accounts in excess of USD50,000, financial institutions can report lower balance accounts at their option. Furthermore, under the CRS guidelines, financial institutions are to report all accounts, regardless of balance. This, in conjunction with the lack of notification to account holders, creates uncertainty among the affected Australian residents. Low value accounts will be fully taxed in Australia already. The net revenue to the US from tax on low value accounts is negligible.	Medium

3.3.1.3 Disclosure

Problem	Detailed Description	Priority (H/M/L)
Lack of notification	Currently, there are no notification requirements from either the Financial Institution or the ATO that information is being provided the US about a person	High
Inability to correct errors	The lack of detailed disclosure of any information provided means that there is no mechanism to identify and correct errors.	High
Privacy Protocols	Privacy protocols are unclear	High

Problem	Detailed Description	Priority (H/M/L)
Security Protocols	Security protocols for data exchange unclear. The IRS is treated as a trusted entity, in spite of a history of poor data security. ²	High
Is the ATO receiving data on a subset of taxpayers that it would not otherwise receive?	(Clarify? reword? Delete?)	Low

3.3.2 Policy & Power

The purpose of this section is to identify the Australian organisations or groups that are directly accountable for making the required changes to achieve our FTT! group objectives. For the most part, the required change actions need to be undertaken by specific governmental bureaucracies and may not necessarily require political / legislative intervention. This observation is important in that it suggests that it may not be necessary to “politicise” this issue or seek broad political support from our elected representatives or the general voting public to achieve our group aims. Furthermore, if we can establish a defensible “business case” detailing the concrete costs to the Australian economy of acquiescing to US taxation of Australian residents, we may be able to motivate the accountable bureaucracies to assign resources to address the problem.

It is also important to differentiate between **Targets** (accountable persons or decision makers) and **Influencers** (those who do not have the power to bring about the desired change but may be effective in persuading targets to make the required changes). For example, media organisations, a key Influencer, cannot directly achieve our group aims, but may play a key role in motivating Targets.

Taxation policy has three components: 1) Policy objectives and approval, 2) Policy research and development and 3) implementation. The key organisational bureaucracies accountable for Australian action on the tax treaty and FATCA are:

- 1) **Specific elected Australian Governments officials** accountable for setting policy objectives:
 - a. Treasurer
 - b. Minister for Revenue and Financial Services
 - c. Minister for Small Business
- 2) **Treasury** - accountable for developing and researching policy options to be implemented in the tax treaty and FATCA
 - a. Corporate and International Tax Division
 - b. International Tax Treaties Unit
- 3) **ATO** - accountable for implementation of tax policy (FATCA, etc.)

² [One security breach reported last year](#), which ended up including data on over 700,000 taxpayers was actually an [ongoing problem first reported in February 2015](#). Identity theft using IRS data is common with [two recent cases](#) involving [IRS employees](#).

Glossary & List of Acronyms

{Alphabetise & remove table borders later}

Acronym	Meaning
Accidental Americans	Claimed by the US as citizens, Accidental Americans have virtually no connection to the US. They were either born in the US to foreign parents and moved back home when they were very young, or they were born outside the US to one US parent and have lived their life as a citizen and resident of their country of birth.
AFI	Australia Financial Institutions (often referred to as Foreign Financial Institutions in US FATCA documentation)
A-REIT	Australian listed Real Estate Investment Trust
ATO	Australian Tax Office , Australian bureaucracy responsible for taxation reporting, collection and compliance
ETF	Exchange Traded Fund – a managed fund that is traded on the stock exchange.
FATCA	Foreign Account Tax Compliance Act is a 2010 United States federal law to enforce taxation requirements for United States persons, including those living outside the U.S.
FB	Facebook
FFI	Foreign Financial Institutions , see AFI
FTC	Foreign Tax Credit - for Australian source income, taxes paid to Australia will offset any US tax payable. Most people with mainly employment income will find that the FTC fully offsets their US taxes (so they have zero balance due in the US).
FTT	Let's Fix the Tax Treaty! Organisation
IGA	Intergovernmental Agreement ; generally the basis for implementing FATCA. Note this agreement is not a treaty in a strict sense as generally does not require full government ratification & approval on the US side.
IRS	Internal Revenue Service , US bureaucracy responsible for taxation reporting, collection and compliance
LIC	Listed Investment Company – a listed company in the business of investing in other companies and unlisted assets.
NIIT	Net Investment Income Tax – enacted as part of the Affordable Care Act (ObamaCare), this is a 3.8% US surtax on net investment income which cannot be offset by Foreign Tax Credits.
PFIC	Passive Foreign Investment Company - for purposes of United States income tax, U.S. persons owning shares of a passive foreign investment company (PFIC) are subject to extremely strict, onerous and complex tax regulations that, in effect, make it prohibitive to invest in mutual fund type investments outside the USA.

Appendix 1: Evidence Base Requirements

Presently, there is little awareness by government, policy makers or the general public of the issues caused to Australians through the US practices of Citizenship-based taxation. Consequently, to affect change, we will first need to educate policy makers and influencers such as the media. To do this, it will be important to create a defensible evidence base in support of our position.

There are many advantages of having a well-considered evidence base, including:

- Readily available, documented and clear factual support for our cause
- Common knowledge source
- Clear (single) messages rather than risk of confusing mixed facts and figures
- media and policy maker engagement kit development

This evidence base can take a number of forms including 1) Wiki – online educational source with hyperlinked references, 2) White Papers – well thought-out and researched position papers on specific elements of the issue, etc.

Evidence generation should consider the following (modified, after [Unicef Advocacy Toolkit](#)):

1. Is the evidence grounded in solid research, preferably undertaken by experts?
 - Clear evidence – scale, severity, impact on lives
 - Based on research and rigour
 - “killer” statistics
2. Does the evidence highlight the root causes of the problem?
3. Does the evidence provide convincing solutions to the problem?
 - Feasible solutions ... Reliable & relevant
4. Is the evidence complimented with qualitative analysis when it is quantitative, and vice versa?
5. Is the evidence complimented by human impact stories that highlight the personal and human dimensions of the problem
6. Can the evidence be easily disseminated?
7. Is the evidence timely?

Table 1 - Evidence Requirements

No.	Evidence Issue	Comment / Intent
1	Number of impacted Australian stakeholders	
2	etc. - to be filled out	
3		
4		
5		
6		
7		

8		
9		
10		